

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/00133/2019
DATED THIS THE 13th DAY OF NOVEMBER, 2019
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Sri B.Swaminathan, 61 years
S/o. Sri. S.Balasubramanyam
Retired Senior Divisional Mechanical Engineer
SWR, Hubballi Diesel Shed
Hubballi: 580 023.
Residing at No: 3/C13, Axis Plaza
Suvidha Colony, Keshwapur
Hubballi: 580 023.

....Applicant

(By Advocate Shri P.A.Kulkarni)

Vs.

1. General Manager
South Western Railway
Rail Soudha
Gadag Road
Hubballi: 580 020.
2. Divisional Railway Manager
Divisional Office, Personnel Branch
South Western Railway
Hubballi: 580 020.
3. Senior Divisional Mechanical Engineer
Diesel Loco Shed
Gadag Road
Hubballi: 580 020.

...Respondents

(By Advocate Sri J.Bhaskar Reddy)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he retired as Senior Section Engineer(SSE) (Mechanical) at Railway Diesel Shed, Hubballi, SWR on 31.8.2017 on attaining the age of superannuation. His grievance regarding promotion to the post of SSE on par with one Sri G.V.Prasad Babu who is junior to the applicant at all levels, is

unresolved until his retirement and even up to this date. Aggrieved by the same, he filed the present OA seeking the following relief:

- a. *Quash the order bearing No: H/P.612/IV/EMD/Seniority/Vol.1, dated 10.10.2017, Annexure-A1, passed by Divisional Railway Manager, South Western Railway, Hubballi, R-2 herein.*

Consequently and/or independently

- b. *Direct the respondents to rectify the mistake committed in respect of applicant's promotion to the SSE grade, by revising his date of promotion to 24.11.2009 on par with date of promotion of Sri.G.V.Prasad Babu to that grade, with all consequential benefits including the monetary benefits flowing there from.*
- c. *Direct further the respondents to cause revision of his pension calculation and terminal benefits accordingly.*
- d. *Pass any other order or direction that this Hon'ble Tribunal may deem it fit and necessary in the facts and circumstances of the present case and in the interest of justice and equity.*

2. The applicant submits that his promotion to the SSE grade has taken place w.e.f. 5.9.2011 while Sri G.V.Prasad Babu came to be promoted to the SSE grade w.e.f. 24.11.2009. The administration's stand is that Sri G.V.Prasad Babu is senior to the applicant which has been repelled by the applicant in 2009 itself by submitting a representation dtd.24.11.2009(Annexure-A2). The applicant submits that he joined as Khalasi and came to be empanelled as Substitute Khalasi in the Gooty Diesel Shed under Guntakal Railway Division in terms of order dtd.5.5.1979(Annexure-A3) wherein his name appears at Sl.No.2 under Diesel Electrical Wing. He became a regular Diesel Khalasi w.e.f. 18.9.1979 in terms of the order dtd.11.12.1979(Annexure-A4) whereas Sri G.V.Prasad Babu joined Diesel Shed Gooty as Khalasi on 30.10.1979. However, in the seniority list of Diesel Electrical Khalasi Helper of Guntakal Division prepared as on 1.1.1984 and notified on 27.2.1984(Annexure-A5), the information pertaining to the applicant and Sri G.V.Prasad Babu are wrongly furnished in regard to the date of appointment viz., for Sri G.V.Prasad Babu, the date of appointment is noted as 1.3.1980 and for the applicant, it is noted as 1.7.1981 but for the date of entry in

to present grade, it is mentioned as 2.6.1983 against both of them. In the result, Sri G.V.Prasad Babu's ranking is shown at Sl.No.138 and that of the applicant is at Sl.No.160.

3. The applicant further submits that vide notification dtd.6.11.1998, the Chief Project Manager, EMD Diesel Shed Hubballi(Annexure-A6) has called for applications from staff of all five Diesel Sheds under South Central Railway since at that time, Guntakal Dvn., and Hubballi Dvn., were part of South Central Railway, for posting at EMD Diesel Shed at Hubballi wherein a new Diesel Shed for homing WDG-4 type Locomotives started functioning in or around 1999-2000. South Central Mechanical Branch, Secunderabad vide notification dtd.22.1.2001(Annexure-A7) indicated a mechanism for fixation of seniority in the cadre of staff at Hubballi Diesel Shed. In continuation of representation at Annexure-A2, the applicant submitted one more representation dtd.4.11.2010(Annexure-A8) pointing out the discrepancy appearing in the seniority list which is continued since 1984 seniority list without rectification. It is also stated that the applicant's date of entry into Technical-II Grade is 1.3.2002 and that of Sri G.V.Prasad Babu is 1.4.2001 and thus in this cadre also the applicant is junior to Sri G.V.Prasad Babu. But in the promotion order dtd.20.3.2003(Annexure-A9) for Technician-I Grade, the applicant's name appears at Sl.No.11 and that of the Sri G.V.Prasad Babu's is at Sl.No.10. Thereafter, the date of entry into the grade of JE-II & JE-I in respect of both is 11.11.2005 and 25.4.2008 respectively. However, Sri G.V.Prasad Babu who is junior to the applicant all along came to be promoted to SSE Grade w.e.f. 24.11.2009 whereas the applicant's promotion to that grade has taken place only on 5.9.2011(Annexure-A10). Sri G.V.Prasad Babu retired from Railway service

on 28.2.2013 while working as SSE Electrical and the applicant retired on 31.8.2017 and he has not sought any relief at the cost of retired colleague Sri G.V.Prasad Babu and therefore, Sri G.V.Prasad Babu is not arrayed as party-respondent in the present OA. Even before his retirement, the applicant submitted one more representation dtd.24.7.2017 relating to denial of his simultaneous promotion when his said junior came to be extended the promotion earlier than him. When he submitted RTI application dtd.4.9.2015(Annexure-A12) regarding disposal of his earlier representation dtd.8.3.2011, the Divisional Office, Hubballi vide reply dtd.28.9.2015(Annexure-A13) informed the applicant that information sought for is in the nature of self grievance and hence he is advised to submit another representation for redressal of his grievance and if such representation is submitted, it would be dealt with as per Rules. On 2.8.2018, the applicant submitted one more RTI application seeking the service particulars of Sri G.V.Prasad Babu(Annexure-A14). The authority has sent reply on 14.9.2018(Annexure-A15) providing only the seniority list of SSE grade without furnishing the information asked for in Annexure-A14. Against the reply dtd.14.9.2018, the applicant submitted first appeal to the ADRM, SWR Hubballi stating that the particulars regarding date of appointment of Sri G.V.Prasad Babu were not furnished to him. The DRM, Hubballi vide communication dtd.10.10.2017(Annexure-A1) has replied to the applicant stating that the said Sri G.V.Prasad Babu is senior to the applicant. The applicant submits that in the communication dtd.10.10.2017, the administration has not explained as to how and why the applicant could not get his promotion to SSE grade w.e.f. 24.11.2009 the date on which Sri G.V.Prasad Babu came to be promoted to that grade. Administration has never clarified as to how Sri G.V.Prasad Babu is senior to him especially in presence of career graph of both of them, whereby the

administration has committed a serious mistake in not causing applicant's promotion to SSE grade on par with Sri G.V.Prasad Babu's date of promotion and administration is not rectifying its mistake in spite of his consistent/persistent approach. It is also clear that until 10.10.2017, the applicant was kept under dark by the Railways in respect of his valid grievance. Therefore, he is entitled for the relief as prayed by him. He submitted an MA for condonation of delay of 111 days in filing the OA with a prayer to condone the delay as after filing of appeal dtd.8.10.2018 to which there was no response from the Appellate Authority, he filed the present OA in the month of January 2019. Hence, the claim made in the OA is not hit by delay/laches.

4. The respondents, on the other hand, have submitted in their reply statement that the OA is severely barred by limitation since Sri G.V.Prasad Babu against whom the applicant is claiming seniority and promotion, got his promotion as Sr.Section Engineer(SSE) w.e.f. 23.11.2009 and the applicant got his promotion as SSE on 5.9.2011. The applicant should have challenged the seniority and promotion within one year from 23.11.2009 and the applicant has in a very casual and leisurely manner approached the Tribunal without even arraying Sri G.V.Prasad Babu as a respondent. Nothing prevented the applicant in approaching the Tribunal within the limitation period after giving representation at Annexure-A2. The applicant was not serious enough and has slept over the matter for a long time and allowed the matter to crystallize and now he approached the Tribunal only to unsettle the settled issue. Therefore, the OA is liable to be dismissed both on the grounds of limitation and non-joinder of necessary parties.
5. The respondents submit that the applicant is referring to Office Orders dtd.5.5.1979(Annexure-A3) and 11.12.1979(Annexure-A4) showing his seniority

in Guntakal Division. If at all the applicant has dispute over his seniority with Sri G.V.Prasad Babu, he should have challenged the same in Guntakal Division itself and at the earliest when Sri G.V.Prasad Babu was given promotion as SSE on 23.11.2009. The applicant himself is admitting that in Annexure-A5 issued on 27.2.1984 by Guntakal Division, there was an error and the applicant has not escalated the matter by executing departmental remedies or approaching the Tribunal. As per Annexure-A7, the present respondents assigned the seniority based on the seniority of the applicant and Sri G.V.Prasad Babu published in Guntakal Dvn., and there are no violations of any condition by the respondents. The applicant was giving one after the other representations and Annexure-A8 is also such a representation. If the applicant was serious enough on the inaction of the respondents even after the representation dtd.4.11.2010, he should have challenged before the Tribunal. Any amount of representation will not extend the limitation and Annexure A11 will not come to the protection of the applicant. The applicant is trying to mislead the Tribunal by producing details given under RTI and staking claim that the cause of action arose from the date of application under RTI which is highly illogical and absurd by any stretch of imagination. The applicant is trying to extend the cause of action which has arisen when he disputed his seniority in Guntakal Dvn. published during 1984, thereafter on promotion of Sri G.V.Prasad Babu as SSE on 2011 and after retirement of Sri G.V.Prasad Babu during 2013. When there was no reply to his representations, the applicant has lost his legal right that too in cases of assigning of seniority which was settled years back. The averment of the applicant that he is not seeking any relief in the OA at the cost of his retired colleague Sri G.V.Prasad Babu and hence has not arrayed him as respondent, is a strange one unknown to law. Any order granting relief to the applicant will necessarily have financial

consequences on Sri G.V.Prasad Babu because of recovery of arrears of increment and also may have adverse impact on the pension of Sri G.V.Prasad Babu. Without giving opportunity of being heard to Sri G.V.Prasad Babu, it will be conspicuous absence of principles of natural justice in deciding the matter by this Tribunal which is the bedrock of administrative law. There is a well settled principle and law laid down by the Hon'ble Supreme Court that any number of representations in cases of seniority which are settled for over a long period of time cannot be unsettled and the respondents shall have to rework on the issue of seniority and promotion even if the applicant is successful and whatever benefits accrued to Sri G.V.Prasad Babu cannot be reversed at his back. On any score, the OA is not maintainable either in law or in facts and is liable to be dismissed. The respondents also filed objection to the MA for condonation of delay filed by the applicant.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The main grouse of the applicant is that vide Annexure-A3 & A4, his date of engagement in the respondents' organisation is 5.5.1979 and he was absorbed w.e.f.18.9.1979 and one G.V.Prasad Babu whose date of engagement was 31.10.1979 and who was all along promoted along with the applicant has been given promotion to SSE(Electrical) grade w.e.f.24.11.2009 whereas the applicant has been given only w.e.f. 5.9.2011 even though he was senior to the said G.V.Prasad Babu. As can be seen from Annexure-A5, the name of Sri G.V.Prasad Babu appears at Sl.No.138 and his date of appointment is shown as 1.3.1980. In the case of the applicant, he is at Sl.No.160 and his date of appointment is shown as 1.7.1981. This order is dtd.27.2.1984. If at all the applicant had any grievance, he should have raised

this issue in the year 1984 itself rather than waiting for almost 35 years to agitate the same. In fact his first representation in this regard appears to be in the year 2010 probably after the promotion of Sri G.V.Prasad Babu. The applicant does not have any explanation as to why he has kept quiet for all these years. Even in this application, the said G.V.Prasad Babu is not in the party array. There have been any number of cases in which the Hon'ble Apex Court have held that a person having not agitated the issue at the appropriate time cannot sit back without any reasonable cause and having slept over the same for so many years cannot suddenly wake up and raise an issue relating to a supposedly junior person getting promoted before him. In fact, the applicant had not bothered to file any application before this Court even after the said promotion was given to Sri G.V.Prasad Babu in the year 2009. Mere representations and RTI applications etc, will not be of any use of the applicant since the right time for him to object any mistake in his date of appointment or seniority would have arisen in the year 1984 and not in the year 2019. He has also conveniently not arrayed the said G.V.Prasad Babu in the present application.

7. There is no merit in the OA and hence dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00133/2019

Annexure-A1: Order dtd.10.10.2017

Annexure-A2: Representation dtd.24.11.2009

Annexure-A3: Order dtd.5.5.1979

Annexure-A4: Order dtd.11.12.1979

Annexure-A5: Seniority list of Diesel Electrical Khasali Helpers notified on 27.2.1984 by
DRM Guntakal along with typed copy of the relevant portion

Annexure-A6: Copy of communication dtd.6.11.1998 along with typed copy

Annexure-A7: Communication dtd.22.1.2001

Annexure-A8: Representation dtd.4.11.2010

Annexure-A9: Office order dtd.20.3.2003

Annexure-A10: Office order dtd.5.9.2011

Annexure-A11: Representation dtd.24.7.2017

Annexure-A12: RTI application dtd.31.8.2015 received in Divisional Personnel Office on 4.9.2015

Annexure-A13: Reply dtd.28.9.2015

Annexure-A14: One more RTI application dtd.31.7.2018 received in Divisional Personnel Office on 2.8.2018

Annexure-A15: Reply dtd.14.9.2018

Annexure-A16: RTI Appeal dtd.8.10.2018

Annexures with reply statement:

-NIL-

Annexures with MA. /2019 filed by the applicant:

-NIL-

Annexures with MA.555/2019 filed by the respondents:

-NIL-
